UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CAPITOL RECORDS INC.; SONY BMG MUSIC ENTERTAINMENT; ARISTA RECORDS LLC; INTERSCOPE RECORDS; WARNER BROS. RECORDS INC.; and **UMG RECORDINGS INC.**, *Plaintiffs*, v. **JAMMIE THOMAS**, *Defendants*.	Case No. 06-cv-1497 (MJD/RLE) JURY DEMANDED

STATEMENT OF THE CASE

Plaintiffs, members of the Recording Industry Association of America, seek $3.6 million in statutory damages under the Copyright Act as punishment for Defendant Jammie Thomas's allegedly downloading and sharing 24 songs on the peer-to-peer network KaZaA. Jammie will prove at trial that she did not download and share any of these songs; that she never used KaZaA at all; that the songs on her computer, in Windows Media format, were songs copied from the hundreds of CD's that she has legally purchased over the years — copying that the RIAA has repeatedly recognized as permitted under the Copyright Act; that her conduct did not cause substantial harm to the RIAA and would not even if widespread; and that her infringement, if any, constitutes fair use under the Copyright Act and the Constitution.

Jammie will hold Plaintiffs to strict proof with respect to each element of their causes of action for copyright infringement. In particular, Jammie will require that Plaintiffs prove that they own valid copyrights, registered at the time of the alleged infringement, in each of the songs over which they are suing; that Jammie downloaded each song or distributed it to an actual third party (not including Media Sentry, the RIAA's agent) without a license to do so; that, considering all relevant factors, including but not limited to those identified in the Copyright Act, Jammie's conduct does not constitute fair use (a point on which the burden of proof is on Plaintiffs because Jammie is a noncommercial infringer); and that Jammie's conduct either caused or, if widespread, would cause substantial injury to Defendants.

The parties disagree over many substantive points, including:

1. Jammie claims statutory immunity as a "service provider" under 17 U.S.C. § 512, a part of the Digital Millenium Copyright Act, a claim that she will present through a motion for judgment as a matter of law.

2. Jammie claims statutory immunity under 17 U.S.C. § 1008, a part of the Audio Home Recording Act of 1992, a claim that she will present through a motion for judgment as a matter of law.

3. Jammie claims that the statutory damages that the RIAA seeks are unconstitutional as applied to her noncommercial alleged infringement because they are stunningly disproportionate to the actual damages suffered by the RIAA. *See BMW v. Gore*, 517 U.S. 559 (1996). In the alternative, Jammie claims that statutory damages should be held inapplicable to noncommercial infringers as a matter of statutory interpretation and so as to avoid this difficult constitutional question. Jammie will present these claims through a motion for judgment as a matter of law. Jammie agrees to a jury instruction on statutory damages subject to her right to present these constitutional objections to this Court (and to argue them to the jury under the rubric of fair use) later.

4. Jammie claims that, as a noncommercial infringer, she is entitled to a presumption of fair use; that fair use is not limited to the four factors identified in the Copyright Act, but that she is instead free to argue any relevant factor to the jury, including the constitutional purpose of copyright, in connection with this element; and that she is entitled to a jury instruction so stating. *See Sony Corp. of America v. Universal City Studios, Inc.,* 464 U.S. 417 (1984).

5. Jammie and Plaintiffs disagree about a variety of Plaintiffs' specifically requested jury instructions. Jammie has cited authority for her proposed jury instructions in that submission. She will file a memorandum of law setting forth in more detail her authority for objecting to Plaintiffs' jury instructions later this week. (The

parties were able to confer and identify those jury instructions on which agreement could not be reached only today.)

6. Jammie claims that the evidence collected by Media Sentry was illegally collected; that Media Sentry committed criminal violations of the Minnesota, New Jersey, and federal Wiretap Acts and the Minnesota Private Detectives Act in collecting this evidence; that the RIAA's lawyers, including opposing counsel, breached their ethical obligations as lawyers in procuring this evidence illegally to fuel a five-year litigation campaign in which their recording-industry clients have recovered more than $100 million in settlements; and that this evidence must consequently be suppressed. Jammie has presented this claim in a motion to suppress filed today.

Respectfully submitted,

/s/ K.A.D. Camara

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